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HOUSE BILL 586

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE ALTERATION OF
THE BASIC SENTENCE WHEN A FIREARM IS USED IN THE COMMISSION OF
A NONCAPITAL FELONY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-16 NMSA 1978 (being Laws 1977,
Chapter 216, Section 5, as amended) is amended to read:

"31-18-16. USE OF FIREARM- ALTERATION OF BASIC
SENTENCE--SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by the court or
jury shows that a firearm was used in the commission of a
noncapital felony, the basic sentence of imprisonment
prescribed for the offense in Section 31-18-15 NMSA 1978 shall
be increased by [~~one year~~] three years, and the sentence
imposed by this subsection shall be the first [~~year~~] three

underscored material = new
[bracketed material] = delete

1 years served and shall not be suspended or deferred; provided
2 that when the offender is a serious youthful offender or a
3 youthful offender, the sentence [~~imposed by this subsection~~]
4 may be increased by [~~one year~~] three years.

5 B. For a second or subsequent noncapital felony in
6 which a firearm is used, the basic sentence of imprisonment
7 prescribed in Section 31-18-15 NMSA 1978 shall be increased by
8 [~~three~~] five years, and the sentence imposed by this
9 subsection shall be the first [~~three~~] five years served and
10 shall not be suspended or deferred; provided that when the
11 offender is a serious youthful offender or a youthful
12 offender, the sentence [~~imposed by this subsection~~] may be
13 increased by [~~three~~] five years.

14 C. If the case is tried before a jury and if a
15 prima facie case has been established showing that a firearm
16 was used in the commission of the offense, the court shall
17 submit the issue to the jury by special interrogatory. If the
18 case is tried by the court and if a prima facie case has been
19 established showing that a firearm was used in the commission
20 of the offense, the court shall decide the issue and shall
21 make a separate finding of fact thereon. "

22 Section 2. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 2007.